

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

THE BACKER LAW FIRM, LLC, on behalf of)	
itself and all those similarly situated,)	
)	
)	
Plaintiff,)	
)	Case No.
v.)	
)	
COSTCO WHOLESALE CORPORATION,)	
)	
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant Costco Wholesale Corporation (“Defendant”) hereby removes this action from the Circuit Court of Jackson County, Missouri, to the United States District Court for the Western District of Missouri.¹ In support of this Notice of Removal, Defendant states:

1. Plaintiff filed its Petition for Damages against Defendant on April 2, 2015, in the Circuit Court of Jackson County, Missouri, in the case styled *The Backer Law Firm LLC v. Costco Wholesale Corporation*, Case No. 1516-CV07104. A copy of the petition filed in the state court action is included in Exhibit A attached hereto.

OVERVIEW OF CLAIMS ASSERTED

2. In Count I of its Petition, Plaintiff alleges that Defendant violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §227 *et seq.*, when it sent Plaintiff a single, one page facsimile on December 17, 2012. *See* Pet. ¶ 20.

¹ Removal to this Court is proper because the Circuit Court of Jackson County, Missouri lies within the Western District of Missouri.

3. Plaintiff claims no actual damages under the TCPA for the fax allegedly transmitted by Defendant, and instead demands only statutory damages in the amount of \$500 to \$1,500 for each alleged violation of the TCPA. *See* Pet. at p. 6.

4. Plaintiff also alleges four Missouri state law claims: conversion (Count II); violation of the Missouri Computer Tampering Act, RSMo. 569.097 (Count III); negligence (Count IV); and negligence *per se* (Count V). Pet. ¶¶21-51.

5. Plaintiff seeks to represent a class of all persons to whom Defendant transmitted a facsimile promoting Defendant's products or services between April 10, 2011 and April 10, 2015. Pet. ¶11.

THIS CASE IS REMOVABLE BASED ON FEDERAL QUESTION JURISDICTION

6. This case is removable pursuant to 28 U.S.C. § 1331, which provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Count I of Plaintiff's Petition alleges violation of a federal statute, the TCPA.² *See also* 28 U.S.C. § 1441(a).

7. This Court has supplemental jurisdiction over Plaintiff's Missouri state law claims pursuant to 28 U.S.C. 1367(a), which provides that "the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." Plaintiff's Counts II-V form part of the same case or controversy as Count I because all four pertain to the same single-page facsimile transmission alleged to give rise to Plaintiff's TCPA claim.

² Jurisdiction pursuant to 28 U.S.C. § 1331 poses no requirements with respect to diversity of citizenship or amount in controversy.

DEFENDANT HAS COMPLIED WITH ALL PREREQUISITES FOR REMOVAL

8. Pursuant to 28 U.S.C. § 1446(a), attached hereto and marked as Exhibit A is a true and correct copy of all process, pleadings and orders which as of the date hereof have been served upon Defendants in the state court action.

9. Pursuant to 28 U.S.C. § 1446(d), promptly upon filing of this Notice of Removal, copies thereof will be sent to Plaintiff's counsel and filed with the Clerk of the Court in the state court action.

10. Defendant reserves the right to amend or supplement this Notice of Removal, and reserves all rights and defenses, including those available under Federal Rule of Civil Procedure 12.

11. This Notice of Removal is timely because it was filed within 30 days of Defendant being served. 28 U.S.C. § 1446(b). Defendant was served on April 10, 2015. *See* Exhibit A.

12. This Notice of Removal is signed by Defendant's counsel pursuant to Rule 11 of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant hereby gives notice of the removal of the case filed in the Circuit Court of Jackson County, Missouri to the United States District Court for the Western District of Missouri.

Dated: May 1, 2015

Respectfully submitted,

SHOOK, HARDY & BACON LLP

By: /s/ Todd W. Ruskamp

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ATTORNEYS FOR DEFENDANT COSTCO
WHOLESALE CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this, the 1st day of May, 2015, a true and correct copy of the foregoing Notice of Removal of Defendant Costco Wholesale Corporation was filed with the court by using the CM/ECF system, which will send notification of such filing to counsel of record below:

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